not have. That would be unfair to the other unsecured creditors. The primary object of the winding up provisions of the Act, as held by Lindley LJ in *Re Oak Pits Colliery Co*[6] at p 329, is to put all unsecured creditors upon an equality and to pay them pari passu; or in the words of Brightman LJ in *In re Aro*[5] at p 203: 'The basic scheme of the companies legislation is that the unsecured creditors of an insolvent company are to rank pari passu (subject to statutory provisions as to preferential payments)'. For instance, under s 259 of the Act, any disposition of the property including things in action made after the commencement of the winding up by the court is void unless the court otherwise orders. Similarly, s 260 avoids any attachment, sequestration, distress or execution against the estate or effects of the company put in force after the commencement of the winding up by the court, and s 334 contains provisions restricting rights of creditors in respect of execution or attachment proceedings against the company not completed before the date of commencement of winding up.

Counsel for the interveners very helpfully referred us to the case of *Re Exchange Securities & Commodities Ltd & Ors*.[7] In that case, there were ten applications, all by the same nine applicants, relating to ten companies in liquidation. The applicants in respect of each of the companies applied for leave under s 231 of the Companies Act 1948 to commence action against that company. The applicants were all investors in the companies and sought leave to sue the companies with a view to establishing the existence of trust interests on the ground that they were not creditors but beneficiaries under trusts. All the applications were refused by Mervyn Davies J. The learned judge after reviewing the claims and the authorities concluded thus, at pp 195-196:

> I must now decide the question put to me. I have tried to take account of all considerations urged upon me on both sides. My decision is that the companies are not to be at liberty to commence the proposed proceeding. My reason for this is that I must do what is right and fair in the circumstances: see the *Aro* case [1980] Ch 196 at p 208. It seems right and fair to me, in the circumstances of this case, not to allow the action. The approach should be, I think, that leave should be refused under s 231 if the action proposed raises issues which can be conveniently decided in the course of the winding up. It seems plain to me that the issues which would be discussed in the proposed Chancery action can perfectly well be decided in the ordinary course of the liquidation. Now that the liquidator is aware of the trust claims and moreover, has by his counsel undertaken to put before the court in a neutral fashion the issue whether or not the various classes of investors have trust interests, it seems to me quite unnecessary to allow a separate action to decide these issues. I add that there seems to me to be positive benefit in having the issues decided in the liquidation because the procedure should be quicker and less expensive than writ or originating summons proceedings.
>
> The general approach I have mentioned gives way in special circumstances: see, for example, the *Redman* case and compare the *Aro* case. I see no special circumstances here. The considerations urged on the plaintiffs' behalf do not, singly or taken together, seem to me to make it right or fair to allow the action.

For the reasons we have given, this appeal must fail, and we dismissed it with costs.

Appeal dismissed.

Solicitors: *C Arul & Partners; Shook Lin & Bok; Drew & Napier.*

Reported by *Terence Tan Bian Chye*

Chia Chee Yeen v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) — CRIMINAL APPEAL NO 9 OF 1990
YONG PUNG HOW CJ, THEAN AND CHUA JJ
9 OCTOBER 1991

Criminal Law — Murder — Diminished responsibility — Accused must discharge burden on balance of probabilities

The appellant was convicted of the murder of one Daniel De Rozario on 17 July 1987 at Mowbray Camp. At his trial the appellant relied solely on the defence that, at the material time, he was suffering from an 'abnormality of mind'. The trial judges rejected the defence and convicted the appellant (see [1990] 3 MLJ 455) who appealed.

Held, dismissing the appeal:

(1) In law, the burden of proving diminished responsibility, which was on a balance of probability, rested on the appellant. This was a question of fact which must be decided in the light of all the evidence before the court, including medical opinion.

(2) The trial judges gave a full and proper consideration to all the evidence, including the medical evidence and there was nothing to indicate that they had erred in law or in fact in arriving at the conclusion that the appellant was not suffering from any 'abnormality of mind' at the material time.

Case referred to
1 *Tai Chai Keh* v *PP* [1948-49] MLJ Supp 105 (not folld)

Legislation referred to
Penal Code (Cap 224, 1985 Ed) ss 300, 302

Peter Yap for the appellant.
Bala Reddy (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Chua J (delivering the judgment of the court): The appellant was charged on the following charge:

> That you on or about 17 July 1987 at about 10.35am at Provost Unit, Mowbray Camp, Ulu Pandan Road, Singapore, committed murder by causing the death of one Daniel De Rozario, and you have thereby committed an offence punishable under s 302 of the Penal Code (Cap 224).

At the conclusion of the trial, he was convicted and sentenced to death. [See [1990] 3 MLJ 455.] We dismissed the appellant's appeal against conviction and now give our reasons.

At the material time, the appellant was a national serviceman holding the rank of lance corporal ('LCP') and performing the duty of an armskoteman. The deceased, Daniel De Rozario, held the rank of staff sergeant and the post of company sergeant major.

At the trial, the appellant did not dispute the fact that he had shot and killed the deceased. He relied solely on the defence that at the material time he was suffering from an 'abnormality of mind' within exception 7 to s 300 of the Penal Code (Cap 224, 1985 Ed) ('the Code'). If established, this would reduce the offence from that of murder to that of culpable homicide not amounting to murder.

The trial judges rejected his defence. On appeal it was contended for the appellant that their decision was against the weight of the evidence.

The facts

On 12 July 1987, the appellant and two others, LCP Ang Cheng Kam and LCP Mok Weng Yeong, were ordered to clean an area around the ammo dump as punishment for offences which each of them had committed. On 13 July 1987, the deceased checked the area and asked LCP Ang why it was that only certain parts were cleaned. LCP Ang told the deceased that LCP Mok was not around to do his share and that the appellant was not interested in cleaning and had also asked LCP Ang not to do the cleaning. On 17 July 1987, the day of the shooting, at about 9am, the appellant was scolded by the deceased in his office for not obeying orders. The deceased awarded two sets of six weekend confinements as punishment against the appellant, one set for not carrying out instructions to do the cleaning and the other for instigating LCP Ang to disobey orders. As the appellant was due to go for his Combined Tactical Shooting System ('CTSS') exercise that afternoon, the deceased told the appellant to see him again before the latter went for his exercise.

Following this rebuke by the deceased, the appellant said that he felt that he had been wronged. He was angry. He felt himself to be the hero in the television serial 'The Bund'. He wanted to have a talk with the deceased to try to get a solution. But if no solution could be found, then he would open fire.

At about 10am, the appellant returned to the armoury. LCP Chan Wai Seng, the armourer, said his face was expressionless. He walked about in the armoury. Fifteen minutes later, the appellant left, telling LCP Chan that he was going to the ammo dump to do a stock-check. He took the keys from the drawer and left. About ten minutes later, the appellant returned and placed the keys in the drawer. Shortly after that, the appellant told LCP Chan that he was leaving for his CTSS. His M-16 rifle was slung over his right shoulder. He was also wearing his skeleton battle order ('SBO'). Unknown to anyone at that time, he had two revolvers tucked into his waist, and many rounds of ammunition. He said that he had armed himself in that manner because that was what the hero in the television serial 'The Bund' did.

The appellant went to see the deceased at his office. The deceased refused to change the weekend confinements to guard duties as requested by the appellant. There were some arguments between the two. The deceased insulted the appellant's manhood in Hokkien. The deceased finally told the appellant, 'I don't want to talk to you any more' and walked out of his own room into the general office. The appellant said he felt wronged and humiliated. He loaded the rifle and called out the deceased's name and fired. The shot hit the deceased in the head. The top of his skull was blown off and his brain was dislodged and was seen on the floor. Death was instantaneous.

The appellant ran out of the office. He said he saw red in the background and he thought he had seen a ghost. He said the ghost chased him. This 'ghost' was not mentioned in the appellant's statement recorded pursuant to s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Ed) ('the CPC'). He was in fact chased by various army personnel. Ten to twenty metres from the main gate of the camp the appellant said that he saw an obstruction. At that point he thought of dying as a hero. He felt that the world meant nothing to him. He stopped running and pointed the rifle at himself, firing two to three shots. The appellant collapsed on to the ground groaning and muttering words in Mandarin to the effect that he could not take it; he was sorry for his parents; he wanted to die.

A short while later the medical officer, Dr Daniel Sim, arrived. On examining the appellant, he found that the appellant had superficial abrasions over the left chest. There were no other injuries. The doctor did not think there was any need to prescribe any treatment. The appellant was conscious when he was examined by Dr Sim though he did not respond to questions or instructions given.

The following ammunition was recovered from the appellant's shirt and trouser pockets: 20-round type magazine with nine five rounds of 5.56mm bullets inside; 30 live rounds of 5.56mm bullets and 40 live rounds of 0.38 inch bullets.

A s 122(6) CPC statement was recorded from the appellant from 5.25pm to 8.15pm. The appellant did

not challenge the voluntariness of the statement, but objected to it being admitted on the ground that it did not comply with s 122(6) and contended that the defect rendered the statement inadmissible. The objection was overruled by the trial judges who admitted it in evidence.

The defence

It was contended for the appellant that, at the time of the incident, the appellant suffered from a delusion that he was 'the hero' in the television serial 'The Bund'. This delusion was said to have been triggered off by a very stressful event, namely, the scolding and imposition of punishment by the deceased. It was submitted that this delusion was a psychotic condition satisfying the requirement of 'abnormality of mind' within exception 7 to s 300 of the Code which reads:

> Culpable homicide is not murder if the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in causing the death or being a party to causing the death.

The trial judges found that the appellant was not at the time suffering from a delusion that he was 'the hero'. They concluded that he had acted out of anger, imitating 'the hero' in 'The Bund' rather than actually believing that he was 'the hero'. He knew what he was doing, ie to copy the way 'the hero' went about in the showdown with the villains.

In law, the burden of proving diminished responsibility, which is on a balance of probability, rested on the appellant. This is a question of fact which must be decided in the light of all the evidence before the court, including medical opinion.

The evidence

The evidence in support of the delusion came essentially from the appellant alone.

The medical evidence was conflicting. The appellant had no history of mental illness. However, the medical witness for the defence, Dr R Nagulendran, a consultant psychiatrist, diagnosed the appellant as suffering from 'psychotic depression with personality disorder'.

The facts or circumstances upon which Dr Nagulendran relied to show that the diagnostic features of a major depressive episode were present were all obtained from the appellant himself and his mother. The trial judges said:

> But by their very nature such facts or circumstances must be carefully scrutinized and matched against the objective evidence, particularly the conduct of the appellant shortly before and after the incident, bearing in mind that it is all too easy for an accused person to say that he was depressed or had insomnia or had poor appetite. We say this fully conscious of the quantum with which an accused has to prove any matter where the law imposes a burden upon him.

Prosecution witness Dr Ang Ah Leng, a consultant psychiatrist, disagreed with Dr Nagulendran's diagnosis. He was of the opinion that the appellant was not suffering from any psychotic depression because a person who suffers from psychotic depression coupled with a delusion of the kind alleged would continue to harbour such a delusion even after the villain had been eliminated. The very nature of a delusion is that it is a false belief that arises without appropriate external stimulation and is maintained unshakeably in the face of reason and such a belief is not one ordinarily shared by other members of a patient's social, cultural and educational grouping. Dr Ang said that the delusion suffered by a psychotic patient cannot disappear just like that. The delusion will disappear as the psychotic depression subsides. A person who truly suffers from psychosis could not return to reality immediately after the happening of an event. He could not get out of that deluded state in a matter of one and a half hours. Treatment is required for a person who suffers from such a mental illness. It could go off spontaneously without treatment but that would require even more time.

The prosecution also called Professor Kok Lee Peng, Assistant Professor of Psychiatric Medicine at the National University of Singapore. She had not examined the appellant. She testified that brief reactive psychosis can occur even to a normal person but there must be an immediate stressful life event for that to come about.

The three experts before the trial court have not come across a case of brief reactive psychosis of such extremely short duration. Dr Kok said from her experience the shortest period was three days. Even Dr Nagulendran has not encountered a case of psychosis of such brief duration. The trial judges said:

> We agree that one should not be obsessed with the question of the duration of the psychosis which must by its very nature vary from case to case. It is nevertheless a point to be borne in mind. Of course far more important are the acts and the conduct of the person during the relevant period in question.

As to the appellant's character, his colleagues found him to be at worst, an 'ordinary national serviceman' and at best, a 'good national serviceman'. He was generally a friendly person, though shy and reserved. None of them said that he was an aggressive person. He admired or adored actors and actresses and his primary hobby appeared to be having his photographs taken with actors and actresses. He showed albums of these photographs to his colleagues.

In his evidence the appellant said that he hated the deceased the first time he saw him. He felt that the deceased was a villain. Prior to this incident, the deceased had frequently scolded him, calling him lazy and crazy. The appellant said that one of his hobbies was to have himself photographed with movie/TV actors and actresses. He also liked to watch movies and television serials. He said that he was very affected by what he saw in 'The Bund' and to use his words, 'I was completely thrown in with the character in the scene.'

None of the witnesses for the prosecution said that there was any change in the appellant's behaviour or the way he carried out his duties prior to the date of the incident. The evidence was that immediately prior to 17 July 1987, the appellant was performing his duty as an armskoteman satisfactorily. The trial judges found that there was no objective evidence tendered to show that the appellant was not his normal self during the two weeks before the incident.

The trial judges noted that on 12 July 1987, when the appellant was carrying out the work of cleaning the area around the ammo dump as a punishment together with LCP Ang and LCP Mok, the appellant even had the sense, which is quite normal, of telling LCP Ang that they should finish their work quickly. Even as late as 14 July 1987, when he was required to clean the area around the ammo dump all over again, all he was complaining about was that it was unfair that LCP Mok was not required to do cleaning together with them. There were no signs of any exceptional behaviour but only expressions of unfairness that LCP Mok should get off just because he had another assignment to do.

The trial judges said:

> Even on the accused's own evidence, he disliked the CSM from the first time he laid eyes on the CSM, and that the CSM often called him lazy and crazy, yet he had the audacity to challenge the authority of the CSM by instigating LCP Ang not to carry out the CSM's order. In our judgment, what happened on 17 July 1987 was a continuation of that defiant streak in the accused.

On the contention that the appellant was truly under a delusion, the defence relied a great deal on two facts: (a) the way the appellant over-armed himself; (b) the appellant shooting the deceased in the presence of so many other people in the office.

On the first fact, the trial judges said:

> This court has not been shown how the hero went about meeting the villains in 'The Bund'. No evidence was placed before this court on that. Assuming that that was how the hero did in going to meet the villains, we think this aspect of the accused's conduct is consistent with both scenarios, ie the accused truly believing himself to be the hero and the accused imagining himself and consciously wanting to imitate the hero in 'The Bund' in the circumstances in which the accused found himself.

On the second fact, the trial judges said:

> Here again we think that this fact is neutral. It could be as much the act of an angry person who did not care about the consequences. This point and the previous point on overarming must be viewed in the overall context.

Before us, counsel for the appellant contended that on these points the trial judges erred in not drawing the inference more favourable to the appellant. He argued that they were obliged to do so where two inferences were equally probable. He cited the case of *Tai Chai Keh* v *PP*, a decision of the Court of Appeal of the Federation of Malaya for this proposition. In particular, counsel relied upon a passage from Spenser Wilkinson J's judgment at p 108 which reads:

> Where there is more than one inference which can reasonably be drawn from a set of facts in a criminal case, we are of the opinion that the inference most favourable to the appellant should be adopted.

In that case, however, the court was dealing with the prosecution's burden of proving guilt beyond a reasonable doubt. The principle stated by Spenser Wilkinson J could not be applied in the present case: the burden was on the appellant to show, on the balance of probabilities, that the case fell within exception 7 to s 300 of the Code. We could not accept counsel's further contention that this burden would have been discharged once it was shown that the delusion was possible. It is trite law that proof on the balance of probabilities entails showing that it was more likely than not that there was such a delusion.

The trial judges adverted to other instances where the objective evidence was inconsistent with the alleged delusion. The trial judges said:

> What strikes us is that if the accused did in fact suffer a brief reactive psychosis following the first meeting with the CSM that day, it is most extraordinary that the first thing he thought of on the occurrence of the brief reactive psychosis was to go to the canteen to eat and after that on his return to the armoury, to loiter there in silence. If the brief reactive psychosis had come over to the accused which made him believe that he was the hero in 'The Bund', we would have expected him to act immediately. His emotions then must have been high. In our view, his conduct portrays the picture of a person who wanted to imagine himself a hero and who was trying, in that angry state, to figure things out in his mind. And having reflected and figured out how he would act, he proceeded to get the ammunition, two revolvers and one M-16 rifle, got dressed in the skeleton battle order and left the armoury, telling Chan Wai Seng ('PW5') that he was going for his CTSS exercise. His s 122(6) statement supports this view.

[The appellant's s 122(6) statement suggested that he acted out of anger, not under a delusion, and was himself when he shot the deceased.]

Further in the judgment, the trial judges said:

> The next point is this. The accused said that he believed himself to be the hero. He was going to have a settlement

talk with the CSM and if that failed he would shoot the villain (CSM) and then commit suicide. Yet, what happened was that after having shot the villain the accused did not embark on any self-wounding action that would lead to suicide; instead he ran away.

The accused explained that he ran away because he saw blood and thought that that was a ghost. Would a hero in that position be afraid of blood and ghost? Such a hero would have expected blood to flow, as that would be the natural consequence of his act. Neither would a hero be afraid of a ghost or ghosts. Why did the accused run away and only stop to shoot at himself when he realized he was pursued and he discovered the barrier a short distance in front of him? This, in our view, shows that he was conscious all the time of what he was doing and when he discovered that he could run no further, he took what he then came to think was the only out — to commit suicide.

It is pertinent to note that some of the first utterances of the accused after his attempted suicide were 'I can't take it anymore', 'I want to die', 'sorry for my parents'. We are unable to accept Dr Nagulendran's opinion that that was the point at which the accused's psychotic depression subsided and the delusion of being a hero ceased. It seems to us that the accused's senses and rational behaviour never left him. Having considered all the evidence before us, we are not satisfied that a case has been made out that the accused was suffering from brief reactive psychosis for the period from slightly past 9am to approximately 10.40am on 17 July 1987 or any part thereof.

The trial judges found that the appellant was not a person without considerable understanding. The appellant's answers in court, even in respect of events prior to and subsequent to the period of the alleged psychosis, were very often 'cannot remember' or 'I don't know'. The trial judges said:

> At some stages answers of this type were almost mechanical that it was difficult to resist the inference, that he was, so to say, intellectually malingering.

Conclusion

We were of the opinion that the trial judges gave full and proper consideration to all the evidence, including the medical evidence. We did not find anything to indicate that they erred in law or in fact in arriving at their conclusion that the appellant was not suffering from any 'abnormality of mind' at the material time. Accordingly, we dismissed the appeal.

Appeal dismissed.

Solicitors: *Peter Yap & Co.*

Reported by *Mathavan Devadas*

Koh Swee Beng v Public Prosecutor

COURT OF CRIMINAL APPEAL (SINGAPORE) — CRIMINAL APPEAL NO 6 OF 1990
YONG PUNG HOW CJ, THEAN AND CHUA JJ
9 OCTOBER 1991

Criminal Law — Murder — Provocation — When provocation can be said to have ceased — Whether accused's actions consistent with provocation — Penal Code (Cap 224, 1985 Ed), s 300 exception 1

The appellant was charged with the murder of one Tay Kim Teck. On 16 February 1988, the deceased had assaulted the appellant's 'foster' father. The appellant was enraged by this and, together with five other persons, chased and caught the deceased. The appellant was armed with a knife. While the other members of his party assaulted the deceased, the appellant stabbed the deceased several times, in the chest and legs. The medical evidence revealed that the stab wounds to the chest were sufficient in the ordinary course of nature to cause death. The appellant was convicted (see [1990] 3 MLJ 151) and he appealed.

Held, dismissing the appeal:

(1) In considering the defence of provocation, one must compare the act of provocation with that of retaliation. The reasonable relationship between the two was an essential factor to be taken into consideration.

(2) Any provocation that might have caused the appellant to lose his self-control would have ceased when the deceased fled.

(3) The appellant's repeated stabbings of the deceased were wholly disproportionate to any provocation that could have been caused to the appellant. The appellant inflicted no less than five stab wounds on the deceased, two of which were fatal, while the deceased was lying on the ground struggling against the assault of four or five persons. Such stabbings were not the acts of a man provoked but one bent on revenge.

Case referred to
1 *Vijayan* v *PP* [1975] 2 MLJ 8 (folld)

Legislation referred to
Penal Code (Cap 224, 1985 Ed) ss 300, 302

Appeal from: Criminal Case No 1 of 1989 (High Court, Singapore)

Peter Fernando for the appellant.
Ang Sin Teck (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Yong Pung How CJ (delivering the judgment of the court): The appellant was charged as follows:

> That you, Koh Swee Beng, on or about 16 February 1988 at about 4.12pm at Block 66, Jalan Tiong, Singapore, committed murder by causing the death of one Tay Kim Teck, and you have thereby committed an offence punishable under s 302 of the Penal Code (Cap 224).

At the conclusion of the trial, the appellant was convicted of the charge and sentenced to death.